

# Cullen Bank

Member: Cullen/Frost Bankers. A Family of Texas Banks

September 18, 1981

13242

RECORDATION NO. .... Filed 1425

Interstate Commerce Commission  
12th and Constitution Avenue, N.W.  
Washington, DC 20423

SEP 24 1981-9 15 AM

INTERSTATE COMMERCE COMMISSION

Attention: Mildred Lee, Room 2303

Dear Ms. Lee:

Pursuant to the provisions of Section 1116.4 of Chapter X of the Regulations of the Interstate Commerce Commission, I am submitting to you the following:

1. Security Agreement and Mortgage covering railroad tank cars (1 original and two counterparts).
2. An exhibit attached to the Security Agreement and Mortgage containing a general description of the railroad equipment.
3. A check for \$50.00 to cover the filing fee.

The names and addresses of the parties to this Mortgage transaction are as follows:

Mortgagor (Debtor):

A. T. Webber, Jr.  
600 Jefferson Avenue, Suite 1017  
Houston, TX 77002

Mortgagee (Secured Party):

Cullen Center Bank & Trust  
600 Jefferson Avenue  
Houston, TX 77002  
Attn: James L. Hacker, Sr. Vice President

Guarantor - None

The stamped original documents, indicating the time and date of their filing with your office, should be returned to Cullen Center Bank & Trust at the address and to the attention as above.

Page 2  
September 18, 1981

Please call the undersigned collect at 713/652-7600 if you have any questions regarding this matter.

Very truly yours,

CULLEN CENTER BANK & TRUST

By: 

James L. Hacker

Senior Vice President

JLH/caw  
Enclosures

**MARGRAVES, KENNERLY & SCHUELER**

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

CULLEN CENTER BANK BUILDING

HOUSTON, TEXAS 77002

713/659-4800

September 16, 1981

Interstate Commerce Commission  
12th and Constitution Avenue, N.W.  
Washington, DC 20423

Attention: Mildred Lee, Room 2303

Dear Ms. Lee:

Enclosed please find the required transmittal letter to the Commission from our client, Cullen Center Bank & Trust, together with three (3) executed instruments entitled "Security Agreement and Mortgage" covering railroad tank cars owned by A. T. Webber, Jr., and a check from this law firm in the amount of \$50.00 to cover the cost of your filing fee.

If possible, please call the undersigned collect at 713/659-4800 when the Security Agreement is recorded. Should you have any questions regarding this matter, please feel free to contact me. Your assistance is greatly appreciated.

Very truly yours,

  
JAMES DOYLE

JD/caw  
Enclosures

cc: Mr. James Hacker  
Senior Vice President  
Cullen Center Bank & Trust  
600 Jefferson Avenue  
Houston, TX 77002

13242  
RECORDATION NO. .... Filed 1425

SEP 24 1981-9 15 AM  
INTERSTATE COMMERCE COMMISSION

**Interstate Commerce Commission**  
Washington, D.C. 20423

9/24/81

OFFICE OF THE SECRETARY

**James L. Hacker**  
**Senior Vice President**  
**Cullen Center Bank & Trust**  
**600 Jefferson at Smith**  
**P.O. Box 1315, Houston, Texas 77001**

Dear  
**sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **9/24/81** at **9:15am**, and assigned re-  
recording number(s). **13242**

Sincerely yours,

*James H. Payne*  
Acting Secretary

Enclosure(s)

See

13242

RECORDATION NO. .... Filed 1425

SEP 24 1981-9 15 AM

STATE COMMERCE COMMISSION

SECURITY AGREEMENT AND MORTGAGE

A. T. WEBBER, JR., whose mailing address is 600 Jefferson Avenue, Suite 1017, Houston, Texas 77002, hereinafter called "Debtor", and CULLEN CENTER BANK & TRUST, A TEXAS BANKING ASSOCIATION, with banking quarters at 600 Jefferson Avenue, Houston, Harris County, Texas 77002, hereinafter called "Secured Party", agree as follows:

SECTION I. CREATION OF SECURITY INTEREST.

Debtor hereby assigns, transfers and sets over to Secured Party and grants to Secured Party a security interest in the Collateral described in Section II of this Security Agreement. The security interest is granted to secure the performance and payment of the obligations and indebtedness of the Debtor to Secured Party arising out of: (a) that certain Promissory Note of even date herewith in the principal amount of ONE HUNDRED SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$175,000.00) herein referred to as the Note (the "Note") executed by Debtor, payable to the order of Secured Party, and all other notes given in substitution therefor or in modification, renewal or extension thereof, in whole or in part incurred; and (b) all other obligations or indebtedness now or hereafter incurred under or arising pursuant to the provisions of this Security Agreement, the Note or any other instrument now or hereafter evidencing or securing the indebtedness secured hereby or any part thereof.

SECTION II. COLLATERAL.

The Collateral of this Security Agreement consists of:

1. Five (5) 23,500 gallon nominal capacity railroad tank cars, DOT No. 111 A100 W3, exterior coiled and insulated (general purpose), with 100-ton roller bearing trucks bearing Nos. RTMX2556, RTMX2557, RTMX2559, RTMX2560, RTMX2561;
2. All rights of Debtor under that certain Management Agreement ("Management Agreement") dated April 26, 1977, between Debtor and Richmond Leasing Company, a Delaware corporation, whose address is 1700 West Loop South, Suite 1500, Houston, Texas 77027,

pertaining to the lease and maintenance of the above described railroad tank cars, and amendments to such Agreement or new agreements pertaining to such railroad tank cars; and

3. All equipment, inventory, general intangibles, accounts, chattel paper, accessions, substitutions, proceeds and products used in connection with or arising out of any of the foregoing. The term "proceeds" shall have the same meaning as used in Chapter Nine of the Uniform Commercial Code as now adopted in the State of Texas and shall include (without limitation) all accounts, general intangibles, instruments, documents, monies, insurance, chattel paper, income, and other property, benefits or rights of whatever kind or nature arising from, attributable to or accruing from any and all sales, leases, or other disposition of any or all of the Collateral.

The inclusion of proceeds in this Security Agreement does not authorize Debtor to sell, dispose of or otherwise use the Collateral in any manner not specifically authorized by this Security Agreement.

#### SECTION III. PAYMENT OBLIGATIONS OF DEBTOR.

(1) Debtor shall pay to Secured Party any sum or sums due or which may become due pursuant to the Note or any security instrument securing the same and this Security Agreement.

(2) Debtor shall pay to Secured Party on demand all expenses and expenditures, including reasonable attorneys' fees and other legal expenses incurred or paid by Secured Party in exercising or protecting its interests, rights and remedies under this Security Agreement, plus interest thereon at the highest lawful rate from time to time permitted by applicable federal or Texas law, whichever shall permit the higher rate, but if applicable law does not provide for a maximum rate, then at a rate five (5) percentage points above Secured Party's Prime Rate.

(3) Debtor shall pay immediately, without notice, the entire unpaid indebtedness of Debtor to Secured Party secured by this Security Agreement, upon Debtor's default under Section V of this Security Agreement.

#### SECTION IV. DEBTOR'S WARRANTIES, REPRESENTATIONS AND AGREEMENTS.

Debtor warrants, represents and agrees that:

(1) All information supplied and statements made by Debtor prior to, contemporaneously with or subsequent to the execution of this Security Agreement or the Note are and shall be true, correct, complete, valid and genuine.

(2) No financing statement covering the Collateral or its proceeds is on file in any public office; except for the security interest granted in this Security Agreement by and between Debtor and Secured Party, there is and hereafter shall be no lien, security interest or encumbrance in or on the Collateral; and Debtor is the owner of the Collateral, free of any adverse claim or security interest except for the security interest granted herein, and Debtor shall, at its own expense, do, make, procure, execute and deliver all acts, things, writings and assurances as Secured Party may request to acquire, protect, assure or perfect good title in the Collateral (free and clear of all adverse interest and liens except for the security interest granted herein). Debtor will defend the Collateral and its proceeds against the claims and demands of all persons claiming the same or any interest therein.

(3) Demand, notice, protest and all demands and notices of any action taken by Secured Party under this Security Agreement, or in connection with any obligation, except as otherwise provided in this Security Agreement, are hereby waived, and any indulgence of Secured Party, substitution for, exchange of or release of Collateral, in whole or in part, or addition or release of any person liable on the Collateral, is hereby assented and consented to.

(4) Debtor's location is 600 Jefferson Suite  
1017, Houston, Texas 77002.

(5) Debtor will give Secured Party thirty (30) days' prior written notice of any addition, change and/or discontinuance of (a) its address as shown at the beginning of the Security Agreement; (b) its location as set forth in this Security Agreement; and (c) its name, its identity or corporate structure.

(6) Debtor shall pay prior to delinquency all taxes, charges, liens and assessments against the Collateral (except those which the legality or validity therefor being contested in good faith by appropriate proceedings diligently conducted), and upon Debtor's failure to do so, Secured Party at its option may pay any of them and shall be the sole judge of whether any such contest of the legality or validity thereof is in good faith and is being diligently conducted, and the amount necessary to discharge the same. Such payment shall become part of the indebtedness secured by this Security Agreement and shall be paid to Secured Party by Debtor immediately and without demand, with interest thereon at the highest lawful rate from time to time permitted by applicable federal or Texas law, whichever shall permit the higher rate, but if applicable law does not provide for a maximum rate then at a rate five (5) percentage points above Secured Party's Prime Rate.

(7) The Collateral is and shall remain in Debtor's possession or control at all times at Debtor's risk of loss, and Secured Party may inspect it at any time. The Collateral will not be used or moved outside the State of Texas.

(8) The Collateral will be used for business purposes.

(9) The Collateral will not be misused or abused, wasted or allowed to deteriorate, except for the ordinary wear and tear of its intended primary use, and will not be used in violation of any statute or ordinance.

(10) Debtor will have and maintain insurance at all times with respect to all tangible personal property included in the Collateral in an amount equal to the full insurable value of such property. Debtor will also maintain on the Collateral insurance in such amounts and against such hazards and liabilities as customarily is maintained by other companies in the area operating similar businesses. Debtor shall furnish Secured Party with certificates or other evidence satisfactory to Secured Party of compliance with the insurance provisions hereof. Such insurance shall name Secured



Party as loss payee as its interest may appear. Debtor shall, upon request of Secured Party, furnish Secured Party with certificates or other evidence satisfactory to Secured Party of compliance with the insurance provisions hereof. All policies of insurance shall provide for thirty (30) days' minimum cancellation notice to Secured Party. Debtor shall notify Secured Party of any cancellation of or material change in any insurance coverage. Secured Party may act as attorney for Debtor in obtaining, adjusting, selling or cancelling any such insurance and in endorsing any drafts drawn by insurers of any of the Collateral. Debtor shall use the proceeds of any insurance resulting from damage, loss, theft or destruction of the tangible personal property included in the Collateral (a) to repair, if practical in the opinion of Secured Party, the equipment with respect to which the insurance loss was sustained, or (b) if repair is not practical in the opinion of Secured Party (i) to furnish, upon demand by Secured Party, additional collateral in a form and with a value satisfactory to Secured Party or (ii) to reduce by an amount equal to the aggregate sum of such proceeds the indebtedness secured hereby whether then due or not. In the event Debtor shall furnish additional collateral pursuant to this section, Debtor shall sign and deliver any financing statement or other document or procure any document, and pay all connected costs, necessary to create the security interest of Secured Party in such additional collateral and to reasonably protect such security interest against the rights or interests of third persons.

(11) Debtor will sign and execute all Financing Statements and other documents and procure any documents, and pay all connected costs, necessary to protect the security interest under this Security Agreement against the rights or interests of third persons.

(12) Debtor shall, at its expense, do, make, procure, execute and deliver all acts, things, writings and assurances as Secured Party may at any time require to protect, assure or enforce its interests, rights and remedies created by, provided in or emanating from this Security Agreement.

(13) Debtor will not rent or lease or lend, sell, transfer or otherwise dispose of the Collateral or any interest therein except as authorized in this Security Agreement or in writing by Secured Party. Debtor shall keep the Collateral, including the proceeds thereof, free from unpaid charges, including taxes, and from liens, encumbrances and security interests other than that of Secured Party, except for liens arising by operation of law securing charges or taxes not yet past due, liens and security interests consented to in writing by Secured Party, liens permitted pursuant to the Loan Agreement, and liens which are being contested in good faith by appropriate proceedings diligently conducted.

#### SECTION V. EVENTS OF DEFAULT.

Debtor shall be in default under this Security Agreement upon the happening of any of the following events or conditions (herein called an "Event of Default"):

(1) Any warranty, representation, or statement contained in this Security Agreement or made or furnished in writing to Secured Party by or on behalf of Debtor in connection with this Security Agreement or to induce Secured Party to make a loan to Debtor proves to have been false in any material respect when made or furnished; or

(2) An Event of Default, as defined in the Note, shall occur.

#### SECTION VI. SECURED PARTY'S RIGHTS AND REMEDIES.

##### A. Rights Exclusive of Default.

(1) This Security Agreement, Secured Party's rights hereunder or the indebtedness hereby secured may be assigned from time to time, and in any such case the assignee shall be entitled to all of the rights, privileges and remedies granted in this Security Agreement to Secured Party and Debtor will assert no claims or defenses it may have against Secured Party against the assignee, except those granted in this Security Agreement.

(2) Secured Party may enter upon Debtor's premises at any reasonable time to inspect the Collateral and Debtor's books and records pertaining to the Collateral, and Debtor shall assist Secured Party in making such inspection.

(3) Secured Party may execute, sign, endorse, transfer or deliver in the name of Debtor, notes, checks, drafts or other instruments for the payment of money and receipts, certificates of origin, applications for certificates of title or any other documents necessary to evidence, perfect or realize upon the security interest and obligations created by this Security Agreement.

(4) Secured Party may call at Debtor's place or places of business at intervals to be determined by Secured Party and, without hindrance or delay, inspect, audit, check, copy and make extracts from the books, records, journals, orders, receipts, correspondence and other data relating to the Collateral or to any transaction between Debtor and Secured Party, and Debtor shall assist Secured Party in making any such inspection.

(5) Secured Party may make any demand upon or give any notice to Debtor by its deposit in the mails or with a telegraph company, addressed to Debtor at Debtor's address shown at the beginning of this Security Agreement, or to the change of such address of which Debtor has last notified Secured Party in writing.

(6) At its option, Secured Party may discharge taxes, liens or security interests or other encumbrances at any time levied or placed on the Collateral, may pay for insurance on the Collateral and may pay for the maintenance and preservation of the Collateral. Debtor agrees to reimburse Secured Party on demand for any payment made, or any expense incurred by Secured Party pursuant to the foregoing authorization, plus interest thereon at the highest lawful rate of interest from time to time permitted by applicable federal or Texas law, whichever shall permit the higher rate, but if applicable law does not provide for a maximum rate, then at a rate five (5) percentage points above Secured Party's Prime Rate.

B. Remedies After Default.

Upon the occurrence of an Event of Default, and at any time thereafter, without waiving any of the rights or remedies hereunder:

(1) Secured Party may declare all obligations secured hereby immediately due and payable and shall have the rights and remedies of a Secured Party after default under the Uniform Commercial Code of Texas, and in addition thereto and cumulative thereof, the following rights: the right to sell, lease, or otherwise dispose of any or all of the Collateral and the right to take possession of the Collateral, and for that purpose Secured Party may enter upon premises on which the Collateral or any part thereof may be situated and remove the same therefrom. It is agreed and understood that upon the occurrence of an Event of Default, as herein defined, Secured Party may enter upon any premises on which the Collateral or any part thereof may be situated, take possession and remove the same therefrom by any lawful means, either judicial or nonjudicial, including without limitation, nonjudicial retaking of the Collateral by the Secured Party from the possession of Debtor and judicial sequestration of the Collateral without notice and without hearing, whether or not Debtor is about to remove Collateral beyond the jurisdiction of the court in which any judicial proceeding could be brought, or conceal or destroy said Collateral, or whether or not the Collateral is of a type which diminishes rapidly in value. Secured Party may require Debtor to assemble the Collateral and make it available to Secured Party at a place to be designated by Secured Party which is reasonably convenient to both parties. Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold in a recognized market, Secured Party will send Debtor reasonable notice of the time and place of any public sale thereof or of the time after which any private sale or other disposition thereof is to be made. The requirement of sending reasonable notice shall be met if such notice is mailed, postage prepaid, to Debtor at the address designated in this Security Agreement at least ten (10) days before the time of sale or disposition. Secured Party may apply the proceeds of any disposition of the Collateral to the satisfaction of the

indebtedness of Debtor secured hereby and the expenses of sale in any order or preference which Secured Party in its sole discretion may choose. Reasonable expenses of retaking, holding, preparing for sale, selling or the like shall include but not be limited to, Secured Party's reasonable attorneys' fees and legal expenses, and Debtor agrees to pay such expenses, plus interest thereon at the highest lawful rate of interest from time to time permitted by applicable federal or Texas law, whichever shall permit the higher rate, but if applicable law does not provide for a maximum rate, then at a rate five (5) percentage points above Secured Party's Prime Rate. Debtor shall remain liable for any deficiency.

(2) Secured Party may remedy any default and may waive any default without waiving the default remedied or without waiving any other prior or subsequent default.

(3) The remedies of Secured Party hereunder are cumulative, and the exercise of any one or more of the remedies provided for herein shall not be construed as a waiver of any of the other remedies of Secured Party.

#### SECTION VII. ADDITIONAL AGREEMENTS.

(1) The section headings appearing in this instrument have been inserted for convenience only and shall be given no substantive meaning or significance whatever in construing the terms and provisions of this instrument.

(2) No failure or delay on the part of the Secured Party in exercising any power or right under this Security Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. No modification or waiver of any provision of this Security Agreement or any of the notes nor consent to any departure by the Debtor therefrom shall in any event be effective unless the same shall be in writing, and then such waiver or consent shall be

effective only in the specific instance and for the purpose for which given. No notice to or demand on the Debtor in any case shall entitle the Debtor to any other or further notice or demand in similar or other circumstances.

(3) "Secured Party" and "Debtor" as used in this instrument include the successors, representatives, receivers, trustees and assigns of those parties. Terms not defined in this instrument which are defined in the Texas Uniform Commercial Code are used with the meanings as therein defined. All notices and other communications required or permitted to be given hereunder shall be deemed to have been effectively given if given in writing and sent by United States mail, postage prepaid as a registered or certified item, to Debtor at the address shown at the beginning hereof, or such other address as Debtor shall have supplied to Secured Party in writing.

(4) Except with the prior written consent of the Secured Party, none of the Collateral shall be released herefrom until all of the indebtedness secured hereby shall have been fully paid and performed.

(5) The parties hereto agree that this Security Agreement shall be governed by and construed and enforced under the laws of the State of Texas and the United States of America.

(6) Debtor agrees to give Secured Party written notice in the event that either Richmond Leasing Company or Debtor defaults under its obligations set forth in the Management Agreement. Debtor will not terminate, alter, amend, or change the terms and conditions of the Management Agreement without the prior written consent of the Secured Party.

(7) In the event Debtor defaults under its obligations set forth in the Management Agreement and Richmond Leasing Company advises Debtor of such default, Debtor shall immediately notify Secured Party, and Secured Party may, at its option, cure such default. Any sums so advanced or expenses (as defined in the

Management Agreement) paid by Secured Party on behalf of Debtor shall be secured hereby.

(8) At Secured Party's election, all railroad tank cars may be marked with Secured Party's name designating it as Secured Party and may bear the following inscription: "Title to this car is subject to documents recorded under 20(c) of the Interstate Commerce Act".

(9) Debtor will furnish Secured Party as soon as possible (but in no event within thirty (30) days) after being requested to do so by Secured Party, an aging and listing of all accounts receivable for such quarter, together with a listing of the locations of the Collateral and the names and addresses of the lessees of the Collateral, certified by Debtor. Upon receipt, Debtor will furnish Secured Party copies of the Quarterly Reports (such term being used herein as it is used in the Management Agreement). All monies, income and benefits due or to become due to Debtor by virtue of leases covered by the Management Agreement shall be transmitted to Secured Party with the Quarterly Reports as such monies, income and benefits become due and payable. Debtor agrees to notify Richmond Leasing Company to transmit all payments due pursuant to Paragraph 7 of Article III of the Management Agreement or otherwise to Secured Party. All such remittances described above shall be applied and credited by Secured Party first to the discharge of any expenses or damages for which Secured Party may be entitled to receive reimbursement for under the terms of the Indebtedness, this Agreement, or otherwise; and lastly, to the payment of principal on the Indebtedness; provided, however, that any excess not so credited or applied shall be paid over to the Debtor.

(10) Within thirty (30) days after the close of each calendar year, the Debtor will furnish to the Secured Party financial statements of the Debtor certified by the Debtor as being correct as at the end of such year.

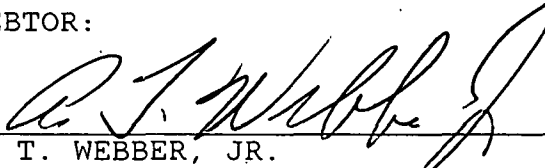
(11) In the event one or more of the provisions of this Security Agreement shall be invalid, illegal; or unenforceable in

any respect, under any applicable law, the validity, legality or enforceability of the remaining provisions contained herein shall not be affected or impaired thereby.

EXECUTED this 18<sup>th</sup> day of September, 1981.

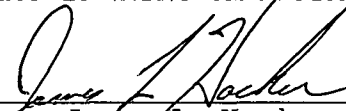
This Agreement may be executed in counterparts.

DEBTOR:

  
A. T. WEBBER, JR.

SECURED PARTY:

CULLEN CENTER BANK & TRUST,  
A TEXAS BANKING ASSOCIATION

By:   
Name: James L. Hacker  
Title: Senior Vice President



THE STATE OF TEXAS )

COUNTY OF HARRIS )

On this 18 day of September, 1981, before me personally appeared A. T. WEBBER, JR., to me known to be the person described in and who executed the foregoing instrument and he acknowledged that he executed the same as his free act and deed.

Charlene Wischniewsky  
NOTARY PUBLIC IN AND FOR  
HARRIS COUNTY, TEXAS  
Name: CHARLENE WISCHNEWSKY  
My Commission Expires: 6/30/85